



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Contract Award and Rejection of Non-Responsive Bids for Lodi Lake Park Office Project (\$77,700)

MEETING DATE: December 20, 1995

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt the attached resolution rejecting the non-responsive bids and awarding the contract for the above project to Cypress Modular, Inc. of Walnut Creek in the amount of \$77,697 and appropriate funds in accordance with recommendation below.

BACKGROUND INFORMATION: This project will install a handicap-accessible modular building at the entrance to Lodi Lake. These modular buildings are also known as commercial coaches. It will replace the old ranger station which was demolished because it did not meet current building codes. The architectural firm of Wenell Mattheis Bowe advised staff on methods which could be used to create an exterior look on the building that will complement the park setting. The plans and specifications call for a stucco finish on the building and a trellis on its west side. The stucco finish will be similar to the north restroom at the Lake.

Bids for this project were received on October 25, 1995. After the bid opening, the City received three letters regarding the award of the contract for this project. The apparent low bidder, American River Construction, sent the City a letter requesting that their bid be withdrawn as they had made a mathematical error in compiling their bid. The third low bidder, Cypress Modular, wrote that, in their opinion, only contractors licensed as manufacturers/dealers of modular buildings could bid on the project and that the City must reject the bids from American River Construction, McDonald Glenn Company, Ira Matheny, Inc., and Diede Construction as those companies are not licensed commercial coach dealers. The State Department of Housing and Community Development also sent the City a letter after the bid opening indicating their opinion that the City could only award the contract for this project to a manufacturer/dealer of modular buildings. A copy of all three letters is attached.

McDonald Glenn Company was sent a copy of the letter from the State Department of Housing and Community Development and their response is also attached.

Deputy City Attorney John Luebberke has reviewed the correspondence and determined that the City must reject the bids from contractors not licensed by the State as commercial coach dealers (memo attached). Staff is therefor recommending that the City Council reject the bids from American River Construction, McDonald Glenn Construction, Ira Matheny, Inc., and Diede Construction as being non-responsive and award the contract to Cypress Modular, Inc.

The current appropriation for this project is \$37,000 and the total project estimate is \$87,800. Staff is also recommending that the additional funds needed to complete this project be appropriated from the old Lodi Lake Account Fund balance.

APPROVED: _____

H. Dixon Flynn -- City Manager

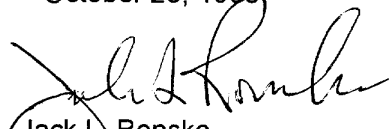
Contract Award and Rejection of Non-Responsive Bids for Lodi Lake Park Office Project (\$77,700)
December 6, 1995
Page 2

Plans and specifications for this project were approved on July 19, 1995. The engineer's estimate is lower than the bids received because it does not include the tile roof, the stucco finish or some of the exterior work which will improve the appearance of this building in this park setting. The City received the following eight bids for this project:

Bidder	Location	Bid
Engineer's Estimate		\$ 57,000
*American River Construction, Inc.	El Dorado	\$ 72,000
*McDonald Glenn Company	Manteca	\$ 76,433
Cypress Modular, Inc.	Walnut Creek	\$ 77,697
*Ira Matheny, Inc.	Modesto	\$ 81,708
Meehleis Modular Bldgs., Inc.	Lodi	\$ 82,973
*Diede Construction, Inc.	Woodbridge	\$ 94,482
Designed Facilities Construction, Inc.	Bloomington	\$ 94,559
Designed Mobile Systems Ind., Inc.	Patterson	\$ 108,000

*Contractor not licensed as a commercial coach dealer.

FUNDING:	Originally Budgeted:	1994/95
	Budgeted Fund:	Capital Outlay Reserve Fund
	Requested Appropriation Fund:	Lodi Lake Account Fund Balance - \$50,800
	Total Project Estimate:	\$87,800
	Bid Opening Date:	October 25, 1995


Jack L. Ronsko
Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer

JLR/WKF/lm

Attachments

cc: City Attorney
Purchasing Officer
Parks and Recreation Director



AMERICAN RIVER CONSTRUCTION, INC.

Cal. Lic. #573022

October 26, 1995

RECEIVED

OCT 27 1995

CITY OF LODI

Wes Fujitani, Senior Civic Engineer
City of Lodi-Public Works Department
PO Box 3006
Lodi, Ca 95241

RE: Lodi Lake Office Project

Dear Mr. Fujitani,

We respectfully ask that American River Construction Inc. be allowed to withdraw our Bid for the Lodi Lake Office Project. This request is being made due to a substantial mathematical error during the calculation portion of the bid process. Please see the attached copy of our bid breakdown for complete clarification.

If you have any questions, please don't hesitate to call us at 916-621-1785. We apologize for any inconvenience this has caused and thank you in advance for your time and cooperation.

Sincerely,

Ron Wood
Sec/Treas.

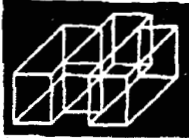
Lodi Lake Office Project

Site Work	1000		
Concrete	8690		
Modular Building	44000	Gary Doupnik	Loomis
Carpentry	2036		
Electrical	3000	shanahan elect	ss
Plumbing	1000		
Tile Roofing	4320	Baker Roofing	Stockton
Exterior Stucco	4120	Dry Creek	Galt
Ext. Painting	400		

	0
total	58876
g.c.	5887.6
total	64763.6
oh&p	6476.36
total	71239.96
bond	1054.351
bid	72294.31

alt a

The top two rows (1&2) were omitted from the formula in the cell that calculates the subtotal. The Site Work and Concrete portions were not represented in the total price.



CYPRESS MODULAR
P.O. BOX 4883
WALNUT CREEK, CA 94596
510.926.0373
FAX 510.926.0373

11-8-95

City of Lodi Public Works
PO BOX 3006
Lodi, CA 95241-1910
Attn: Wes Fujitani

Re: 36'x33' Modular Building

Dear Mr. Fujitani,

Pursuant to our recent conversations, I have listed below the reasons I believe Cypress Modular, Inc. should be awarded the above referenced project.

The bid documents call for the DOHCD requirements to be met. California Health and Safety Code section 18002.6(a) determines that a Commercial Coach dealer is "a person not otherwise expressly excluded by subdivision (b) who (1) for commission, money, or other thing of value, sells...[or] offers for sale,...[a] commercial coach,...or (2) is engaged wholly or in part in the business of selling...commercial coaches..."

The first two low bidders for this project are not licensed as commercial coach dealers with the State of California DOHCD as is **required by law**. The contract for this project is for the **purchase** and installation of a commercial coach. Therefore, the party that contracts with the City of Lodi for this project is **selling** a commercial coach. The two low bidders are in violation of section 18002.6 of the Health and Safety Code and the bid documents and must be found non-responsive.

Should you have any further questions, please feel free to contact me.

Sincerely,

Alan Worsham

STATE OF CALIFORNIA - BUSINESS TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, Governor

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DIVISION OF CODES AND STANDARDS

Occupational Licensing Program

1800 THIRD STREET

P.O. BOX 31

SACRAMENTO, CA 95812-0031

(916) 323-9803 FAX (916) 327-4712

From TDD Phones: 1-800-735-2929



Post-It™ brand fax transmittal memo 7671		# of pages • 4
To <i>Wes Fujitani</i>	From <i>Craig Cramer</i>	
Co. <i>City of Lodi</i>	Co. <i>Dept. of Housing</i>	
Dept.	Phone # <i>(916) 327-2831</i>	
Fax # <i>(209) 333-6842</i>	Fax #	

October 26, 1995

Wes Fujitani
Public Works Department
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

Dear Mr. Fujitani:

This letter is to confirm our conversation this date regarding commercial coach dealer licensing requirements. The City of Lodi has received a bid from a general contractor, who is not a licensed commercial coach dealer, to provide a commercial coach as part of the "Lodi Lake Park Office Project." This general contractor has subcontracted with a licensed commercial coach dealer to provide the commercial coach. The City of Lodi does not have a direct contract with the commercial coach dealer who is providing the commercial coach. The question is whether or not the general contractor is also required to be licensed as a commercial coach dealer?

The following excerpt from Health and Safety Code Section 18002.6(a) defines a commercial coach dealer as "a person not otherwise expressly excluded by subdivision (b) who, (1) for commission, money, or other thing of value, sells,...[or] offers for sale,...[a] commercial coach..., or (2) is engaged wholly or in part in the business of selling...commercial coaches..." A full text copy of this section is enclosed for your information.

Inasmuch as the general contractor is the party offering to sell the commercial coach directly to the City of Lodi, it is the department's opinion that the general contractor in this instance should also be licensed as a commercial coach dealer.

I hope this information is of help to you. If you have any further questions, please call me at (916) 327-2831.

Sincerely,

Craig L. Cramer
District Representative
Occupational Licensing

Enclosure

California Health and Safety Code

18001.4. (Repealed by Ch. 1056, Stats. of 1967, eff. 1/1/68.)

18001.6. Building

"Building" is any permanent structure built for the support, shelter, or enclosure of persons, animals, chattel, or property of any kind.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

18001.8. Commercial coach

"Commercial coach" means a structure transportable in one or more sections, designed and equipped for human occupancy for industrial, professional, or commercial purposes, which is required to be moved under permit, and shall include a trailer coach as defined in Section 635 of the Vehicle Code.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

18002. Commission

"Commission" is the Commission of Housing and Community Development.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

18002.2. (Repealed by Ch. 1056, Stats. of 1967, eff. 1/1/68.)

18002.3. Consumer

"Consumer" includes any person or entity which purchases or leases a manufactured home, mobilehome, commercial coach, recreational vehicle, or truck camper for consideration, except a dealer or manufacturer.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

(Amended by Ch. 1076, Stats. of 1983, eff. 1/1/84.)

(Amended by Ch. 1527, Stats. of 1984, eff. 1/1/85.)

18002.4. (Repealed by Ch. 1056, Stats. of 1967, eff. 1/1/68.)

18002.6. Dealer

(a) "Dealer" means a person not otherwise expressly excluded by subdivision (b), who is engaged in any of the following activities:

California Health and Safety Code

(1) For commission, money, or other thing of value, sells, exchanges, leases, buys, offers for sale, or negotiates or attempts to negotiate a sale or exchange of an interest in a manufactured home, mobilehome, or commercial coach, or induces or attempts to induce any person to buy or exchange an interest in a manufactured home, mobilehome, or commercial coach, and who receives or expects to receive a commission, money, brokerage fees, profit, management fees, or any other things of value from either the seller or purchaser of the manufactured home, mobilehome, or commercial coach.

(2) Is engaged wholly or in part in the business of selling manufactured homes, mobilehomes, or commercial coaches or buying or taking in trade manufactured homes, mobilehomes, or commercial coaches for the purpose of reselling, selling, or offering for sale, or consigning to be sold, or otherwise dealing in manufactured homes, mobilehomes, or commercial coaches, whether or not these manufactured homes, mobilehomes, or commercial coaches are owned by the dealer.

(b) "Dealer" does not include any of the following:

(1) An insurance company, bank, savings and loan association, finance company, or public official coming into possession of one or more manufactured homes, mobilehomes, or commercial coaches in the regular course of business, who only sells manufactured homes, mobilehomes, or commercial coaches under a contractual right or obligation, in performance of an official duty, or under the authority of any court of law. However, a sale subject to this paragraph shall be for the purpose of preventing the seller from suffering a loss or pursuant to the authority of a court of competent jurisdiction.

(2) Persons who sell or distribute manufactured homes, mobilehomes, or commercial coaches, subject to registration or titling pursuant to Chapter 8 (commencing with Section 18075), for a manufacturer to dealers licensed under this part, or who are employed by manufacturers or distributors to promote the sale of manufactured homes, mobilehomes, or commercial coaches dealt in by that manufacturer or distributor. However, if any person also sells manufactured homes, mobilehomes, or commercial coaches at retail, the person is a dealer and is subject to this part.

(3) Persons regularly employed as salespersons by dealers licensed under this part while acting within the scope of that employment.

(4) Persons exclusively engaged in the bona fide business of exporting manufactured homes, mobilehomes, or commercial coaches, or of soliciting orders for the sale and delivery of manufactured homes, mobilehomes, or commercial coaches outside the territorial limits of the United States, if no federal excise tax is legally payable on any of those transactions or the tax is legally refundable on the transactions. Persons not exclusively engaged in the bona fide business of exporting manufactured homes, mobilehomes, or commercial coaches but who are engaged in the business of soliciting orders for the sale and delivery of manufactured homes, mobilehomes, or commercial coaches outside the territorial limits of the United States shall be exempt from licensure as dealers only if their gross sales proceeds from manufactured homes, mobilehomes, or commercial coaches produce less than 10 percent of their total gross revenue from all business transacted.

California Health and Safety Code

(5) Persons not engaged in the purchase or sale of manufactured homes, mobilehomes, or commercial coaches as a business.

(6) Persons disposing of manufactured homes, mobilehomes, or commercial coaches acquired for their own use or for use in a business of acquiring, leasing, or selling manufactured homes, mobilehomes, or commercial coaches, if the manufactured homes, mobilehomes, or commercial coaches have been so acquired and used in good faith and not acquired or used for the purpose of avoiding the provisions of this part.

(7) Persons licensed as real estate brokers who buy, sell, list, or negotiate the purchase, sale, or exchange of manufactured homes or mobilehomes pursuant to Section 10131.6 of the Business and Professions Code.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

(Amended by Ch. 1076, Stats. of 1983, eff. 1/1/84.)

18002.7. (Repealed by Ch. 1056, Stats. of 1967, eff. 1/1/68.)

18002.8. Department

"Department" means the Department of Housing and Community Development.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

18003. Distributor

"Distributor" means any person other than a manufacturer who sells or distributes new manufactured homes, mobilehomes, or commercial coaches to dealers in this state.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

(Amended by Ch. 1076, Stats. of 1983, eff. 1/1/84.)

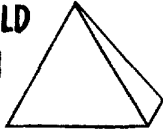
18003.3. Dwelling unit

"Dwelling unit" means one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating, and sanitation.

(Added by Ch. 975, Stats. of 1981, eff. 1/1/82.)

18003.5. (Repealed by Ch. 1056, Stats. of 1967, eff. 1/1/68.)

THE McDONALD
GLENN
COMPANY



Lic #482475

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NOV 10 1995



CITY OF LODI
PUBLIC WORKS DEPARTMENT

November 9, 1995

Wes Fujitani
Public Works Department
City of Lodi
P.O. Box 3006
Lodi, Ca 95241-1010

Subj: Lodi Lake Park Office Project

Wes,

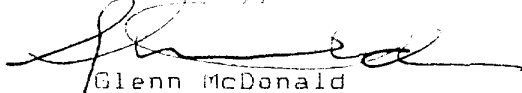
In response to Department of Housing and Community Development's letter date October 16, 1995, signed by Craig L. Cramer (copy attached), we offer the following.

Most notably is the fact the referenced letter offers an opinion and is not a ruling. It is our opinion that the bases of award for the subject project has nothing to do with licensing of a "dealer" for commercial coaches. Public works contracting is regulated by project specifications and the **Public Contracting Code**, for the State of California. Licensing requirements per the Public Contracting Code are so stated in section 6100 of the Public Contracting Code. Within the Public Contracting Code there is no mention of any license requirement by the Department of Housing and Community Development or any other agency other than the State Contractor Licensing Board. If there is an issue of licensing requirements by the Housing Department, that issue is between the Department and licensee.

We reference Article 5 Section 10180 of the Public Contracting Code, in which it is noted that **competitive bidding** is for the benefit and protection of the public, and **not** for the bidders or special interest. It is our opinion that the Public will be served by awarding the project to THE McDONALD GLENN Company. Expense of re-bid and/or the cumbersome tasks by the City to advertise, re-advertise, awarding two contracts and administration of both is not in the best interest of the Public.

We can assure that transfer of title for the commercial coaches will be made directly from our subcontractor/manufacture/dealer to the City of Lodi. There will be provisions within our subcontract agreement between subcontractor/manufacture/dealer that will permit such transfer without violating any known law or regulation.

Sincerely,


Glenn McDonald
President

GM:gm
C:LODIOFF.

The McDONALD GLENN COMPANY

22221 Oleander Avenue
Manteca, California 95337

(209) 823-2772
Fax (209) 823-1389



MEMORANDUM FROM THE
OFFICE OF THE CITY
ATTORNEY

WJL


DATE: November 21, 1995
TO: Wes Fujitani, Senior Civil Engineer
FROM: John M. Luebberke, Deputy City Attorney
RE: Lodi Lake Park Office Project Bids

This memo is intended to respond to the concerns expressed in your memo of November 14, 1995 regarding the necessity of licensing of contractors on this project pursuant Health & Safety Code § 18000 et seq.

As per Health & Safety Code § 18000 et seq., contractors on this project must be licensed as commercial coach dealers by the state. This requirement is triggered by the fact that a commercial coach, as defined at Health & Safety Code § 18001.8, will be purchased through the contractor. This licensing requirement is a state mandate and may not be waived by the city.

Based on the above, all bids submitted by contractors not licensed by the state as commercial coach dealers pursuant to Health & Safety Code § 18000 et seq., are non-responsive and must be removed from consideration in the awarding of this contract.

Respectfully submitted,


John M. Luebberke
Deputy City Attorney

RESOLUTION NO. 95-153

A RESOLUTION OF THE LODI CITY COUNCIL
REJECTING NON-RESPONSIVE BID AND AWARDING CONTRACT
FOR LODI LAKE PARK OFFICE PROJECT

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on October 25, 1995 at 11:00 a.m. for the bid for Lodi Lake Park Office Project, described in the specifications therefor approved by the City Council in July 19, 1995; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

<u>Bidder</u>	<u>Location</u>	<u>Bid Amount</u>
Engineer's Estimate		\$ 57,000.00
American River Construction, Inc.	El Dorado	\$ 72,000.00*
McDonald Glenn Company	Manteca	\$ 76,433.00*
Cypress Modular Inc.	Walnut Creek	\$ 77,697.00
Ira Matheny, Inc.	Modesto	\$ 81,708.00*
Meehleis Modular Bldgs., Inc.	Lodi	\$ 82,973.00
Diede Construction, Inc.	Woodbridge	\$ 94,482.00*
Designed Facilities Construction, Inc.	Bloomington	\$ 94,559.00
Designed Mobile Systems Ind., Inc.	Patterson	\$108,000.00

* Non-responsive bid - Contractors not licensed by the State as commercial coach dealers.


NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the non-responsive bids from American River Construction, McDonald Glenn Construction, Ira Matheny, Inc., and Diede Construction be rejected and the award of the contract for Lodi Lake Park Office Project be and the same is hereby awarded to Cypress Modular, Inc., of Walnut Creek, the lowest responsible bidder, in the amount of \$ 77,697.00.

BE IT FURTHER RESOLVED that an additional amount of \$50,800.00 be appropriated from the old Lodi Lake Account Fund balance for this project.

Dated: December 20, 1995

I hereby certify that Resolution No. 95-153 was passed and adopted by the City Council of the City of Lodi in a regular meeting held December 20, 1995 by the following vote:

AYES: Council Members - Mann, Pennino, Sieglock and Warner (Mayor)
NOES: Council Members - Davenport
ABSENT: Council Members - None
ABSTAIN: Council Members - None


JACQUELINE L. TAYLOR
Deputy City Clerk
95-153